YEAR.....1949.

FILE NO. 1-I/49. COL. NO. 1.

Subj-

IMPORTANT NOTES RELATING
TO THE CONSTITUENT ASSEMBLY
OF INDIA.

...ikh Members of the East Punjab Legislative
...e Constituent Assembly was held on Delhi on 4
following members attended:

...r Singh Sardar Hukam Singh Kairon
...n Singh. Sardar Tarlok Singh Kaithali
...l Singh Sardar Gurbachan Singh Mann
...Singh Sardar Bhupinder Singh
...ahan Singh Bajwa.
... Sardar Bakhshish Singh Mann
...h Singh Sardar Sant Singh Sikh
...ngh Singh Sardar Kapur Singh
...n Singh Sardar Tara Singh
...ton Singh Negi Sardar Hukam Singh Legath
...hahan Singh Sardar Sajan Singh Kirjandpur
...ngare.

...gh, Speaker, East Punjab Legislative Assembly
...lowing proposals were unanimously adopted in
...feguards for Sikh Minorities to be provided
...m. These proposals have also the support of
...mbers who could not be present at the meeting.
...Backward Classes, viz, Mazhabis, Kabirpanthis,
...s, Sikligars etc. should be given the same
...gard to representation in the Legislatures and
...concessions in the East Punjab and Pepsu as may
...the Scheduled Castes. For this purpose, either
...y be included in the Schedule of Scheduled
...d in the Draft Constitution or seats may be
...on population basis out of the quota
...s.
...st Punjab, seats should be reserved for
... their population with right to contest
...
...ces other than the East Punjab and the
...rities where they are entitled to repre-
...strength of their numbers should have seats
... and where adequate numbers are not returned
...ir strength should be made good by nomination.
...ities will be prepared to give up reservation
...jab if Sikh and Hindu Scheduled Castes are
... and seats reserved for them on the strength
...tion.

...se proposals are not accepted, the Sikhs

A meeting of the Sikh members of the East Punjab Legislative Assembly and of the Constituent Assembly was held at Delhi on 9 the 10th May. The following members attended:

1. Sardar Kapoor Singh
2. Sardar Gurmukh Singh Musafir
3. Sardar Gurnam Singh
4. Sardar Bhupinder Singh Mann
5. Sardar Ujjal Singh
6. Sardar Mehtab Singh
7. Sardar Piara Singh
8. Sardar Labh Singh
9. Sardar Sahib Singh Bajwa.
10. Sardar Baldev Singh Mann
11. Sardar Ajit Singh
12. Sardar Gian Singh Rarewala
13. Sardar Harnam Singh
14. Sardar Surinder Singh
15. Sardar Bhan Singh
16. Sardar Tara Singh
17. Sardar Hukam Singh Negi
18. Sardar Hukam Singh Lasara
19. Sardar Gurbachan Singh
20. Sardar Sajan Singh Nijjarpur Ferozepore.

Sardar Kapoor Singh, Speaker, East Punjab Legislative Assembly presided. The following proposals were unanimously adopted in regard to the safeguards for Sikh Minorities to be provided in the Constitution. These proposals have also the support of almost all the Members who could not be present at the meeting.

1. The Sikh Backward Classes, viz, Mazhabis, Kabirpanthis, Ramdasias, Rawrias, Sikligars etc. should be given the same privileges in regard to representation in the Legislatures and other political concessions in the East Punjab and Fepsu as may be provided for the scheduled Castes. For this purpose, either these Classes may be included in the Schedule of Scheduled Castes enumerated in the Draft Constitution or seats may be reserved for them [illegible] out of the quota reserved for Sikhs.

2. In the East Punjab, seats should be reserved for Sikhs according to their population with right to contest additional seats.

3. In Provinces other than the East Punjab and the Centre the Sikh Minorities where they are entitled to representation on the strength of their numbers should have seats reserved for them and where adequate numbers are not returned by election, their strength should be made good by nomination.

4. The Sikhs will be prepared to give up reservation in the East Punjab if Sikh and Hindu Scheduled Castes are lumped together and seats reserved for them on the strength of their population.

In case these proposals are not accepted, the whole

The whole question of safeguards for Sikh minorities may be referred to arbitration in accordance with the assurance given by the Congress.

Sd. Ujjal Singh
Sd. Jogindar Singh Mann
Sd. Gurbachan Singh Bajwa.

Dated the 10th May,1949.

No.CA/17/PR/48

12th December 1948.

As you are already aware the Secretariat of the Constituent Assembly, has requested all the Provincial and State Governments to undertake the preparation of the electoral rolls under the new Constitution on the basis of adult franchise, so that elections to the Central Legislature may be held as soon as possible after the new electoral law is enacted. According to our programme it is proposed that the elections under the new Constitution should be held in the winter of 1949-50. Most of the Provinces and Indian States have nearly completed the preparation of the draft rolls and in some of them the rolls are ready for printing. The idea is that these printed rolls should be kept ready for preliminary publication as soon as the new electoral law is enacted.

If, however, the passing of the Constitution is delayed there will be corresponding delay in the holding of the new elections as the rolls now under preparation cannot be finalised until after the passing of the new electoral law which must in turn await the passing of the new Constitution. For the purposes of the electoral rolls which are under preparation, the age of the elector is being determined with reference to January 1, 1949: that is to say, whoever will not be less than 21 years old on January 1, 1949, is regarded as an "adult". If the passing of the Constitution is delayed and we have to extend this date, it will still be possible to utilise the rolls under preparation after suitable revision so as to include a certain number of new "adults". Clearly, therefore, the preparation of these rolls need not be stayed even if the passing of the Constitution be delayed. I shall be glad if you will kindly let me know whether the Government of India approve our going ahead with the printing of electoral rolls now under preparation.

Sometime ago the Governments of certain Provinces and Indian States asked who was to bear the expenditure incurred in connection with the preparation of the electoral rolls, but as this question was not free from controversy we left it to be considered at a later stage. The Government of Kolhapur have now requested that pending a decision on the general question, the Government of India should advance to that Government a sum of Rs.1,25,000, which is the estimated cost of the printing of the rolls. The Government of Orissa also have informed the Government of India in the Ministry of Law that they intend to prefer a claim against the Government of India under Article 235(3) of the Draft Constitution for about Rs.2.2 lakhs during 1948-49 and about 7.62 lakhs during 1949-50 on account of the expenditure incurred

or likely to be incurred by them in connection with the preparation of electoral rolls.

The preparation of electoral rolls for the Lower House of the Central Legislature is no doubt a function of the Government of India and if this function is entrusted to the Government of any State, then, in accordance with the principle embodied in article 225(3) of the Draft Constitution, the latter Government may properly claim payment of any extra cost incurred in connection with the discharge of that function. This extra cost, in the case of the Provinces, is almost negligible, for they would need the same electoral rolls for their own Legislative Assemblies. At most they might have to print some extra copies for the Centre and they can therefore claim only the cost of printing the extra copies and not the entire cost of preparing the rolls.

The same considerations will also apply to Indian States like Cochin and Travancore, where rolls on the basis of adult suffrage for elections to the State Legislature have already been prepared. As regards the other Indian States, the ultimate position is likely to be the same.

Payment of extra cost to Provinces and States in connection with the preparation of the rolls will involve expenditure from the Central revenues and is wholly a matter for the Government of India. Before we proceed further with this work, we shall be glad to know as early as possible the views of the Government of India in regard to this matter and also the lines on which they would like us to reply to the Governments who have raised this question of incidence of expenditure. As we have instructed the Governments of the Provinces and States to hold up the printing of rolls pending further instructions from this Secretariat, and as any unnecessary delay should, if elections are to be held in the winter of 1949-50, be avoided, I am to request that this reference may kindly be treated as immediate.

(RAJENDRA PRASAD)
PRESIDENT

The Hon'ble the Prime Minister of India,
New Delhi.

NVR/

New Delhi,
January 16, 1949.

My dear President,

Your letter of the 13th December. The Government of India wholly approve of the resolution passed by the Constituent Assembly in regard ~~them~~ to the preparation of electoral rolls. I stated as much on behalf of the Government of India in the course of the discussion in the Constituent Assembly.

As regards the cost of printing etc, this will have to be met by the Provincial or State revenues or the Central revenues . I do not know exactly in what proportion and in what manner this cost is divided. It is for the province or State concerned to write directly to the Government of India on this subject . I am having this matter enquired into.

Yours sincerely,

The Hon'ble
Dr. Rajendra Prasad
President , Constituent ,Assembly,
Camp: Bajajwadi,
Wardha.

Camp: Bajajwadi, Wardha.
19th January, 1949.

My dear Prime Minister,

Many thanks for your letter dated 16th instant intimating that the Government of India wholly approve of the resolution passed by the Constituent Assembly in regard to the preparation of the electoral roll and that the question of cost of printing etc. is being looked into. I have taken up the question of issuing detailed instructions regarding the preparation of the rolls and the draft electoral rules etc. with the Constitutional Adviser and the Secretariat of the Constituent Assembly and the matter is under active consideration .

Yours sincerely

The Hon'ble
Pandit Jawaharlal Nehru,
Prime Minister of India,
New Delhi.

PRIME MINISTER'S SECRETARIAT.

Letter from the President of the Constituent Assembly and my answer to it attached. I shall be glad to have the views of the Law Ministry on it.

Sd. J. Nehru.
16.1.49.

Law Ministry.

Ministry of Law.

From the coming into force of the Montagu Chemsford reforms until 1st April, 1937, elections to the two Chambers of the Old Indian Legislature, including preparation of electoral rolls, was a Provincial subject, and all expensesconnected therewith were borne by the Local Governments concerned. From the 1st April, 1937, the subject became a Central responsibility. The Government of India entrusted the relevant functions under the Central Electoral Rules and Regulations to the Provincial Governments with their consent under sub-section (1) of section 124 of the Government of India Act, 1935 and undertook to reimburse all expenses incurred by them in the performance of those functions. This was recognised to be somewhat in excess of their legitimate dues under sub-section (4) of that section, but all the same, the Provincial Governments were paid for work in connection with the holding of elections the actual cost incurred by them on an agreed basis.

2. In principle the position will continue to be the same under the new constitution. Elections to either Chamber of Parliament, including the preparation of electoral rolls, will be a Union subject. The Union may entrust to the Government of a State with its consent the task of preparing the electoral rolls and conducting the elections. Alternatively Parliament may by law impose these duties on the State. While in the former case the State may refuse its consent unless it is paid all expenses incurred by it, in the latter case the State is

is entitled to get only the "extra costs of administration" incurred by it.

3. At present, however, neither the Provinces nor the States which, in response to the suggestion of the President, have taken preliminary steps for preparing electoral rolls on the basis of adult franchise suffrage, have any valid claim for the reimbursement of any part of the expenses incurred by them. For one thing, it is not a task imposed on them either under section 124 of the Government of India Act, 1935 or under Article 235 of the new Constitution (which latter is of course not intended to have any retrospective operation). For another, so far as all the Provinces and those Acceding States which have practically decided to adopt adult suffrage as the basis of elections to the State Legislatures (e.g. Travancore, Cochin or Mysore) are concerned, the work should be regarded as having been done for their own sake, although incidentally and at a future date, the Union would also benefit by it. Since the other Acceding States are all expected to fall into line in this respect the same view would also be taken in regard to them.

4. I, think, therefore, we should take the line that except in the case of those Acceding States which ultimately decide not to have adult suffrage for elections to the State Legislature, the Government of India would only be liable for any extra cost that a Province or state might incur for getting ready the electoral rolls for the House of the People from the electoral rolls already prepared by it for the State Legislative Assembly. There would be no great difficulty in reaching an agreement in due course as to the amount of this extra cost.

5. As regards the last sentence of the President's letter dated the 13th December, I notice that in an

an official letter dated the 21st December, the Constituent Assembly Secretariat have already suggested to the Governments of all Provinces and States that they "should proceed with the printing of the electoral rolls if they agreed to leave open the question of the incidence of expenditure on the preparation of these rolls". Further more, as indicated by H.P.M. in his letter to the President, this question has to be decided by direct correspondence between the Government of India and the Governments of the Provinces and States concerned. From this point of view, as well as several other aspects connected with the introduction of the new Constitution, it is desirable to set up a Constitution Branch in his Ministry and make it responsible for dealing with all questions of this type. This was in fact anticipated in another connection (vide correspondence resting with Mr. A.V.Pai's letter No. 32/48/48-P.M.S., dated the 28th September, 1948 to the President) and financial sanction was obtained to the creation of a nucleus branch in this Ministry with effect from the 1st March 1949. This Ministry is, therefore in a position to take over this work forthwith if so directed by the H.P.M.

6. I am submitting this note direct in the absence of the H.M. on tour. I shall communicate his comments soon after he returns on the 26th.

Sd. K. Sundaram.
19.1.49.

H.P.M.
Ministry of Law u.o. D. No. 224/49-L dated 20.1.49.

PRIME MINISTER'S SECRETARIAT.

The Prime Minister would be glad to have the Home Ministry's comments on this, particularly the proposal to set up a Constitution Branch in the Ministry of

Law and make it responsible for dealing with all questions of the type mentioned in Mr. Sundarram's note.

This may please be treated as immediate.

Sd. A.V.Pai.
P.P.S. to P.M.
21.1.49.

MINISTRY OF HOME AFFAIRS (Mr. N.V.R.Iengar)
P.M. Sectt. u/o No. D/S/899 dated 21.1.1949.

Ministry of Home affairs.

I much regret having delayed a reply to this reference but I was anxious to send a reply which was acceptable to the Ministry of Law, the Constituent Assembly Secretariat and (if it was concerned at all) the Home Ministry. I have now had the benefit of a joint discussion with Sir B.N.Rau and th Secretary of the Law Ministry. We are all three agreed that a Constitution Branch should be set up in the Ministry of Law with effect from the 1st March 1949. Orders to this effect are already in existence. It is true that when these orders were issued it was assumed that the new Constitution would have been passed by the end of 1948 and that the Constituent Assembly Secretariat would have been / virtually would up by that time. But although this assumption has not proved correct we are now agreed as to the necessity of a Constitution Branch. There is a great deal of work to be done. For example, the work of elections involves numerous questions including questions such as who should bear the cost. It is appropriate that these questions should be taken up by a Ministry of Government and not by the Constituent Assembly Secretariat. There is also the question of examining the adaptations of laws on the basis of the clauses of the new constitution. This is an immense task and the sooner a beginning is made, the better. On all grounds therefore we are agreed that the Branch should commence in a nucleus from 1ime- 1st March 1949. As stated earlier in the note,

note, no fresh orders on this point are necessary.

2. The Hon'ble the President of the Assembly has, in the absence of a specific understanding with Government, dealt hitherto with the question of the prepration of electoral rolls. This is a matter which we think should appropriately fall on the Law Ministry and the Constitutional Adviser has promised to put this point to Dr. Rajendra Prasad. I do not think there will be any serious difficulty in getting his approval. 'A'

Sd. H.V.R.Iengar.
2.2.49.
Secretary.

P.P.S.
No. 66/49/PS dated 2.2.49

I agree.

Sd. J. Nehru.

Home Secretary,
P.M.Sectt. u/o No. D/S 1019 dated 4.2.49

Secretary, Law Ministry, and Constitutional Adviser should see P.M.'s order before the papers are returned to P.P.S.

Sd. H.V.R.Iengar.
5/2

Mr. K.V.K.Sundram,
Sir B.N.Rau
P.P.S.

Seen. Thanks.

Sd. K. Sundaram.
5/2

Seen . Thanks.

Sd. B.N.Rau.
7/2/49

P.P.S.
Ministry of Law D. No. 224/49-L dated 5.2.1949.
Constitutional Adviser, India, New
C.A. of India ~. No. 889 dated 8.2.1949.

Reference 'A' of Mr. Iengar's note on page 5 ante. According to present information H.P. is expected

expected back in Delhi about the 14th instant and it is therefore perhaps no unnecessary for C.A. to write to H.P. on thismatter now. These papers will be put up again on H.P.'s arrival.

P.K.
8/2

K.V. Padmanabham.
8/2

S.Mukherjee
9/2

B.N.Rau
9/2

H.P. is returning to Delhi tomorrow. These papers are accordingly resubmitted.

P.K.
14/2

U.S.
C.A.

K.V.Padmabhabham.
14/2

CONSTITUENT ASSEMBLY OF INDIA

Council House,

New Delhi, the.....

1, Queen Victoria Road,
New Delhi, the 19th February, '48

My dear Prime Minister,

F

At its last meeting the Constituent Assembly passed a resolution giving certain directions upon the electoral work to be done under the new Constitution. Even before the resolution was passed, the Secretariat of the Constituent Assembly had initiated action for the preparation of electoral rolls on the basis of the provisions of the Draft Constitution. Detailed instructions in this matter had been issued to all the Provinces and States as early as March 15, 1948. In nearly all the Provinces and in some of the States the preliminary work of preparing the draft rolls is over; in one or two Provinces the printing of the rolls has already started. The resolution passed by the Assembly fortifies the action taken so far and also enables further steps to be taken in this direction. A further question which naturally arises at the present stage is what machinery should be employed to implement the directions of the Constituent Assembly.

This is a matter which requires careful consideration. There has been an idea that the work connected with the new elections should be entrusted to one of the Ministries of the Government of India, preferably the Law Ministry in view of the financial commitments involved. But other aspects of the case have to be considered. It has been hinted in a section of the press that in some Provinces, Government is attempting to register its own supporters in the electoral rolls. In the bye-elections to Provincial Assemblies which have been recently held it has been freely alleged by members of losing parties, particularly the Socialist Party, that the Provincial Government concerned has taken undue advantage of its position in the conduct of the elections. To avoid giving ground for any such suspicion, it seems important that the machinery to be set up to direct and control the elections under the new Constitution should be an impartial and independent body, above party politics.

The need for securing impartiality and for avoiding even the appearance of any party bias in this

this important matter was realised by the framers of the Draft of the new Constitution and they have accordingly provided in article 289 for the appointment of an Election Commission to superintend, direct and control all elections. In the Draft, as it stands at present, separate Election Commissions for the Centre and the Provinces are contemplated. There is, however, a feeling among members that the interests of the country would be best served if there were only one all-India Commission controlling all the elections, Central as well as Provincial. Before such a body can be set up in anticipation, it is, of course, necessary that the relevant provisions should be approved by the Constituent Assembly. As a matter of fact, during the last session itself there was a proposal that articles 289 to 291 of the Draft Constitution (which relate to the conduct of the elections) should be passed by the Assembly along with the other provisions relating to electoral matters. Unfortunately, owing to lack of time these articles could not be reached. Apart from the constitutional question as to whether it is the present Government of India or the Constituent Assembly which has the power and authority in law to take steps for bringing the new constitution into operation, by setting up the various organs of Government as laid down by the Constitution, it is highly desirable that every thing connected with the elections including preparation of electoral rolls, delimitation of constituencies and conduct of elections should be done by an independent body. It is, therefore, suggested that a Commission of the kind contemplated in the Draft Constitution shouldbe appointed and the Constituent Assembly should meet at an early date and (a) adopt article 289 with suitable amendments as well as (b) pass a resolution authorising the President of the Assembly to appoint an interim Commission pending the coming into operation of the new Constitution. The date of the meeting, which can be on a Saturday, may be fixed in consultation with the Speaker. It may be noted that the preliminary work in connection with the enforcement of the Constitution Act of 1935 as also of 1920 was done not by the Government of India but by a

CONSTITUENT ASSEMBLY OF INDIA

Council House,

New Delhi, the.....

a Reforms Department under the Governor General.

In order to give the Commission an independent status Government may, as in the case of the Constituent Assembly, make a lumpsum grant for its support. In all matters, where Government's sanction is required or when further expenditure on behalf of Government has to be incurred, this body will consult the appropriate Ministry of the Government of India.

Yours sincerely,

(Rajendra Prasad)

The Hon'ble Pandit Jawaharlal Nehru,
Prime Minister of India,
New Delhi.

PRIME MINISTER'S SECRETARIAT
NEW DELHI

March 7, 1949.

Dear Dr. Rajendra Prasad ji,

As desired by the Prime Minister, I enclose herewith for your information a copy of a letter to the Prime Minister from Mr. P.R. Das and a copy of the Prime Minister's reply to it.

Yours sincerely,

(Dharma Vira)

The Hon'ble
Dr Rajendra Prasad,
1, Queen Victoria Road,
New Delhi.

Shantiniketan,
Fraser Road,
Patna.

11th February, 1949.

My dear Panditji,

I think it right that I should inform you that I am proposing to send a communication to the Secretary-General United Nations Organisation, of which I enclose a copy. I have little hope that you will have time to peruse the communication; but I venture to think that it will repay perusal.

I confess that I am, and have always been, one of your most ardent admirers. It is your great personality that has put India on the International map. I am convinced that your leadership and that of Sardar Vallabhbhai Patel is essential for many years to come.

At the same time I am also convinced that you are aiming at Congress dictatorship. There is no such thing as the liberty of the Press today. The latest outrage is an order by Bengal Government on "Saturday Mail" requiring that all matters intended for publication shall be submitted for scrutiny to the Secretary to the Government of West Bengal and that no issue of the journal shall be published except with his written permission. The Congress President has recently admitted that the Press enjoys less freedom today than that it did under the British.

So far as personal liberty is concerned we are in no better position. Thousands of men all over India are today in jail under what the Congress leaders - and particularly my brother the late Deshabandhu Chitta Ranjan Das - used to describe as "lawless laws". These people who are in jail today have no right to appeal to Courts of law; and the Courts of law have no right to consider whether their detention is at all justified.

I suggest with great humility that you have no right to call India a Democratic State unless you guarantee the liberty of the Press and the liberty of the subject. The fundamental rights embodied in the Constitution approved by the Constituent Assembly constitute a grave danger both to the liberty of the Press and the liberty of the subject. I have dealt with it fully in an article which I contributed to the "Indian Law Review" a copy of which I sent for your perusal.

Man, the individual, has, from the dawn of history always been the victim of governmental oppression. That must be so wherever any Constitution permits(as the Constitution of India does) the discretion of the executive to be substituted for the discretion of the Courts, so far as liberty of the subject is concerned. I thought that your idealism would help to establish the Rule of Law in India. But that is not to be. And so, though independence has come, another struggle awaits the country to win freedom for the people.

Yours sincerely,

sd/- P.R.Das.

Encl.One.

Trygve Lie, Esqr.,
Secretary General of the United Nations,
The United Nations Headquarters,
Lake Success,
U.S.A.

Sir,

I venture to address you on the Constitution of India which is now being considered and framed by the Constituent Assembly of India. I consider that certain Articles already adopted constitute a serious menace to the liberty of the subject, and are against the spirit, if not the letter, of the Charter of the United Nations. In my opinion, the United Nations Organisation will be justified, therefore, in taking note of what is being done, in India.

I ought to mention that, prior to the independence of India on August 15th, 1947, there existed a series of statutes which gave complete discretionary power to the executive government (1) to suppress political parties, (2) to detain persons in custody without bringing them up to trial, (3) to control the Press, and (4) to otherwise interfere with the liberty of the subject. "Rule of Law", in the sense in which that term has been used by Professor Dicey, and other writers on Constitutional Law, was unknown to us in India, and the British Government had possessed themselves large discretionary authority to imprison any person without bringing such a person before the ordinary courts. "Rule of Law" means that "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of Law." Experience has shown, as Professor Dicey points out in his "Law of the Constitution" that "Wherever there is discretion there is room for

arbitrariness, and that in a Republic, no less than in a Monarchy, discretionary authority on the part of the Government must mean insecurity for legal freedom on the part of its subjects." While in opposition, the Indian Congress Leaders, many of whom were victims of this discretionary authority on the part of the British Government, were never tired of strongly denouncing these laws which they described as "lawless laws". But, as soon as Congress came into power, it found it convenient, not only to retain all these "lawless laws" but to enact various Acts, called Security Acts, under which the provincial executive governments have obtained enormous discretionary power to imprison persons without bringing them up to trial. In Bengal, under the recent Security Act extensive power has been given to the Police to make searches without warrants, which provision (as to searches without warrants) strikes at the root of personal liberty. The maxim that "every man's house is his castle" is a part of British and American, and I believe of every civilised nations' constitutional law. I would refer you to the celebrated case of Wilkes in this connection. The latest outrage on the freedom of the Press is an order on "Saturday Mail" requiring that all matters intended for publication shall be submitted for scrutiny to the Secretary to the Government, West Bengal, and that no issue of this journal shall be published except with his written permission. Dr. Pattabhi Sitaramayya, the Congress Presidt at a recent press conference has admitted that the liberty of the newspapers is "difinitely less under the National Government" than what it was under the British regime.

Article 13 of the Constitution (as adopted by the Constituent Assembly of India) recognises certain fundamental rights of the citizens, inter alia, to assemble peaceably, and without arms, and to form associations or

unions; but all these are subject to "existing laws", which existing laws recognise the right of the executive Government at its discretion to suppress political parties and prevent assembly of persons and break up meetings. In other words, what has been given by one hand has been taken away by the other.

But it is Article 15 which constitutes the greatest menace to the liberty of the subject. That Article provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law." It was suggested that the words of the American Constitution should be followed, namely, "..... nor shall any State deprive any person of life, liberty or property, without due process of law." The framers of the Indian Constitution, however, preferred the words adopted by them from the Japanese Constitution on the ground that they are more specific than the words in the American Constitution. I maintain that the expression "due process of law" has through judicial interpretations acquired a strictly definite connotation. These words were intended "to secure the individual from the arbitrary exercise of powers of Government, unrestrained by the established principles of private rights and distributive justice." The words adopted by the Constituent Assembly would enable the executive government to deprive a man of his personal liberty, provided the procedure is duly observed. As Mr. Harold Zink has pointed out in his "Government and politics in the United States," (1947) - "While procedural due process demands that actual conduct of the trial be in conformity with objective standards of justice, substantive due process demands that the laws under which trial is conducted be themselves just and fair." Sir Brojendra Mitter, a well-known Indian jurist, has

pointed out that "Article 19 secures procedural due process only. It affords no protection against tyrannical laws." I believe both copies of Article 19 and as adopted by the Constituent Assembly, and also a copy of an article which I contributed to the Indian Law Review, which has been reprinted for your perusal and consideration.

Contd. on next page

Almost each provincial legislature has passed a Security Act curtailing the liberty of the subject. It will be sufficient for us to deal with one of these Acts, the West Bengal Security Act, 1950. It is a temporary Act, but steps are being taken all over India, to convert these temporary Acts into permanent ones. Section 16 of the Act as it stood before its amendment ran as follows:-

"16. (1) The Provincial Government, if satisfied on reasonable grounds, with respect to any particular person that with a view to preventing him from doing any subversive act it is necessary so to do, may make an order-

(a) directing that he be detained;

(b) directing that, except in so far as he may be permitted by the provisions of the order* be specified therein, he shall not be in any such area or place in West Bengal as may be specified in the order;

(c) requiring him to reside or remain in such place or within such area in West Bengal as may be specifed in the order and if he is not already there to proceed to that place or area within such time as may be specifed in the order;

(d) requiring him to notify his movements or to report himself or both to notify his movements and report himself in such manner, at such times and to such authority or person as may be specified in the order;

(e) imposing upon him such restrictions as may be specified in the order in respect of his employment, business or movements, in respect of his association or communication with other persons, and in respect of his activities in relation to the dissemination of news or

* or by such authority or person as may be

preparation of evidence.

(2) there an order is made under subsection (1) directing any person to be detained, the Provincial Government may, if it so wishes make provision for such person, in accordance with such rules as may be made in this behalf, such allowance of expenses as it may deem appropriate.

(3) If any person in in any area or place in contravention of an order made under the provisions of this section, or fails to leave any area or place in accordance with the requirements of such an order then, without prejudice to the provisions of sub-section (6) , he may be removed from such area or place by any police officer or by any person acting on behalf of the Provincial Government.

(4) So long as such an order as aforesaid in respect of any person directing that he be detained, is in force, he shall be liable to be removed to and detained in such place and under such conditions, which may include conditions as to maintenance, discipline or punishment for offences and breaches of discipline, as the provincial Government may from time to time by general or special order specify.

(5) If the Provincial Government has reason to believe that a person in respect of whom such an order as aforesaid has been made directing that he be detained has absconded or is concealing himself so that the order cannot be executed, it may -

(a) make a report in writing of the fact to the a Presidency Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of section 87,88 and 89 of the Code of Criminal Procedure 1898, shall apply

/ in respect

in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) by written notice direct the said person to appear before such officer, at such place and within such period as may be specified in the notice and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he has, within the period specified in the notice, informed the officer of the reason which rendered compliance therewith impossible out of his thereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(6) If any person contravenes any order made under this section, other than an order of the nature referred to in clause (b) of sub-section (5) , he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both."

You will notice that an order under section 36 could be made if the Provincial Government "was satisfied if'on reasonable grounds" with respect to any particular person that it was necessary to make an order with a view to prevent him from doing subversive acts. The case of some of the detenues came up before the Calcutta High Court, the case made on their behalf being that there was no " reasonable grounds" for their detention. In referring the case

/ to a Full Bench

by a full Bench, the Chief Justice of the Calcutta High Court said as follows:-

" Personal liberty is one of the most sacred rights possessed by citizens in any civilised State. There can be no doubt that by a clear and unambiguous legislation such rights can be completely curtailed or even taken away from the subject altogether. The Courts, however, will require the clearest words before they would take away the liberty of the subject."

In the course of his judgment the Chief Justice expressed a strong view that it was open to the Court to examine whether reasonable grounds existed for the detention of the person concerned, and referred that question for the decision of a Full Bench. But before the question came up for decision the West Bengal Legislature, at the instance of the executive government, amended the Act by striking out the words " on reasonable grounds ", thereby making it impossible for the High Court to examine whether the grounds on which the order for detention had been made were reasonable grounds or not.

Section 27, as it originally stood, provided for such detention for a period not exceeding three months subject to a proviso as follows:-

" Provided that the Provincial Government may, if and so often as it thinks fit, before the date on which under this section any such order would otherwise have ceased to be in force, place before a Judge of the High Court in Calcutta the grounds on which the order is made, the representation, if any, made under section 23 by the person affected

/ thereby

hereby set such further materials as the
Provincial Government may think fit and the
Provincial Government shall, in accordance with the
decision of the Judge thereon, issue an order of
release or a fresh order of detention for such period
not exceeding nine months as may be determined by
the Judge.

" Provided also that the person affected by
the order shall not be entitled to be defended
or represented by any lawyer or other person
before the Judge.

" Provided further that the Provincial
Government shall be at liberty to release any such
person at any time notwithstanding any provision
hereinbefore contained."

Under this proviso, the case of 197 detenues

Order on writ of

Under this proviso the case of 107 detenus was placed before a judge of the High Court; and, startling as it may seem, the High Court ordered the release of 68 out of them, that is, more than 63 per cent, which shows that no grounds existed, reasonable or otherwise, or at all, for detaining these 68 out of 107 persons. It follows that 68 persons were deprived of their liberty at the mere whim and caprice of the provincial government. Under the amended Act the Government has a discretionary power to detain a person without trial for 9 months. As "The Statesman", a leading Calcutta daily and the only British newspaper published in India and Pakistan pointed out in its leading article of September 28,1948: "Thus a man may be detained for ten months at the mere fiat of the executive". I may point out to you that hundreds of persons are under detention at the present moment "at the mere fiat of the executive" all over India. I may also add that the Congress Government has suppressed some political parties as illegal and is clearly aiming to make itself the only party in India.

The only question that remains for consideration is whether your Organisation can take note of what is happening in India.

I think I am right in pointing out that the express recognition, and the special protection of fundamental rights of man, have become a general principle of Constitutional Law of civilised States, and that International Law is increasingly taking note of this fact. Freedom from arbitrary arrests is surely a fundamental, inalienable and natural right of man. The view is gaining ground that the rights of Man, unless grounded in, and safe-guarded by, effective recognition on the part of the International Society, are not sufficiently protected against violent encroachment by the State. Experience has shown that the denial of the fundamental rights of man to freedom tends to constitute a danger to international peace. Hitler's Germany and Mussolini's Italy are cases in point. The rise in the period following the first Great War of various forms of

authoritarian dictatorship gave a renewed impetus to the claim for an international recognition and protection of fundamental human rights. In 1929, the Institute of International Law adopted a Declaration of the International Rights of Man. After discussion organised by Mr.Ritchie Caldar, in which people of every creed and all types participated, a Declaration of the rights of Man was drawn up by a distinguished committee. This is known as the Sankey Declaration of Rights. This Declaration is set out at pages 242 to 248 of H.G.Wells' "The Outlook for Hmmo Sapiens". I will take the liberty of quoting from it Article 9 of the Declaration:

"9. Personal liberty: Unless a man is declared by a competent authority to be a danger to himself or others through mental abnormality, a declaration which must be confirmed within seven days and thereafter reviewed at least annually, he shall not be restrained for more than twenty-four hours without being charged with a definite offence, nor shall he be remanded for a longer period than eight days without his consent, nor imprisoned for more than three months without a trial.

At a reasonable time before his trial, he shall be furnished with a copy of the evidence which it is proposed to use against him.

At the end of the three months period, if he has not been tried and sentenced by due process of the law, he shall be acquitted and released. No man shall be charged more than once for the same offence.

Although he is open to the free criticism of his fellows, a man shall have adequate protection from any misrepresentation that may distress or injure him.

Secret evidence is not permissible. Statements recorded in administrative dossiers shall not be used to justify the slightest infringement of personal liberty. A dossier is merely a memorandum for administrative use; it shall not be used as evidence without proper confirmation in open court."

It is pathetic to observe that while all civilised nations, including Japan, have realised that a recognition of the fundamental rights of man is essential to provide a defence to the citizen against the discretionary power of restraint on the part of the Government, for "power tends to corrupt and absolute power corrupts absolutely". India alone has struck a discordant note; India alone shows a tendency to go back to absolutism.

The out-break of the Second World War strengthened the belief that the international recognition and protection of the rights of Man was an essential requirement of international peace. That conviction was repeatedly given expression in various Declarations on war aims, such as, the Atlantic Charter of August 14, 1941, and the Four Freedoms message of President Roosevelt to Congress of January 6, 1941. The Charter of the United Nations indicates in numerous provisions the recognition of human rights in the international field. I refer you to the Preamble: "We the peoples of the United Nations, determined, ... to re-affirm faith in fundamental human rights, in the dignity and worth of the human person,.....". The purposes of the United Nations are set out in Article 1, and one of the purposes as set out in Sub-article 3 is "to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". Article 13 provides that the General Assembly shall initiate studies and make recommendations for that purpose, inter alia, of promoting international co-operation in the economic, social, cultural educational and health fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Article 55 provides that "with a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations

among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote, inter alia, universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Article 62 gives power to the Economic and Social Council "to make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedom for all." Article 68, gives power to the Economic and Social Council "to set up Commissions in economic and social fields for the promotion of human rights".

The Charter clearly contemplates the setting up of a Commission for human rights, one of the principle tasks of which would be the drafting of an International Bill of Rights.

India is an original member of the United Nations Organisation and is clearly bound by the Charter of the United Nations. I submit that its membership involves a limitation on its absolute sovereignty in the legislative field. Having determined "to re-affirm faith in fundamental human rights" and having undertaken, in the most solemn manner, to promote and encourage respect for human rights and for fundamental freedoms for all, it is, I submit, contrary to international conception of human rights on her part to put the liberty of the subject at the mercy of the executive government, as I submit she has already done.

I submit, sir, that I am entitled to have this question considered by your organisation. Is it open to a Member of the United Nations Organisation to give wide discretionary powers of restraint to the executive government by legislation? Having regard to the fact that India is a signatory to the Charter of the United Nations, are the Security Acts passed by the various provincial legislatures constitutional?

These are the questions which I should like to raise before your Organisation.

I submit that these are not questions "essentially within the domestic jurisdiction" of the State, if I am right, (as I

think I am), in the view which I have expressed that the denial of the fundamental rights of man to freedom tends to constitute a danger to international peace.

I humbly pray that the questions raised in this letter be considered by your Organisation.

Yours faithfully,

(P.R. DAS)

"Shanti Niketan",
Fraser Road,
PATNA.
INDIA.

s/c

Personal.

No. 2[illegible]/P.M.

New Delhi,
March 5, 1[illegible].

My dear Sec,

Your letter of the 11th February with its enclosure was only placed before me day before yesterday. I am sorry for this delay. I have been partly out of Delhi.

I have read your letter and your conversation to Trygve Lie, Secretary-General of the United Nations. I confess I feel exceedingly surprised. I am writing to you only briefly now and intend writing at greater length a little later. But the idea of any Indian addressing the Secretary-General of the United Nations in regard to our domestic affairs is entirely odd. It seems appalling to foreign Powers to interfere in our internal arrangements. Apart from this being outside the scope of the United Nations, this raises rather important questions as to what a citizen of India should do and how far it is right for him to go outside India to seek foreign support against his own Government.

You refer to the library of the Press having been put on and to send you cuttings on Order passed by the Bengal Government on "Saturday Night". I am not conversant with Saturday Night and do not know what this Order is. I shall enquire. I do know, however, that a number of periodicals connected on the one hand with the Communist Party and on the other with the Hindu Mahasabha and R.S.S. movements have been writing stuff of the most virulent and abusive kind and Government have withheld them because of their desire not to interfere with the Press as far as possible. I am not sure how the West Bengal Government [illegible] problem in this respect but generally speaking we have encouraged the formation of Press Advisory Committees consisting of representatives of the local Press, and it is only on the advice of these Committees that deposits have been [illegible].

I have fairly considerable experience of the Press of various countries and I do not remember seeing anything quite so virulent and vulgar as has been appearing in some of these periodicals in India. There have been open or indirect incitements to violence and praise of those who have committed violence and murder. It is not my conception of civil liberty or of the freedom of the Press to permit these incitements to violence. Indeed, this deprives that whole Press and brings it into disrepute apart from other undesirable consequences.

Personally, I am not concerned with the action taken against the R.S.S. organisation. This organisation, according

p.t.o.

[redacted]

[redacted]

Sd. Jawaharlal Nehru

[redacted]

PRIME MINISTER
INDIA

No.539-P.M.

New Delhi,
24th May, 1949.

My dear President,

It appears to be taken for granted by some people that the Indian Republic will be proclaimed on August 15th. Personally I rather doubt both the feasibility and desirability of choosing that date. I hope that we may be able to finish the consideration of the Constitution and pass it finally by some time in July. That Constitution will have to contain some transitional clauses and much will depend on the nature of these clauses. I think we should give a sufficient margin after that to allow us to do things properly. Thus the date to be fixed should be some time ahead.

It is clear that the full implementation of the new constitution can only take place after the new elections etc., are over. These elections cannot take place, at the earliest, before the winter of 1950-51. We can hardly wait till then for the proclamation of the Indian Republic. Therefore some date will have to be fixed, much earlier than that when the Republic is proclaimed in accordance with certain transitional clauses passed by the Constitution. What that date should be is a matter for us to consider and will depend on the nature of the steps to be taken by us as laid down in the transitional clauses.

From many points of view, a very suitable date would be January 26th. The only thing that can be said against it is that it is too far off. Some other earlier date may be chosen, but I rather doubt if it can be much earlier than October.

I have referred to the transitional clauses etc. Is it not desirable for thought to be given to them from now onwards? The Drafting Committee may do it or some other Committee. There is no immediate hurry. The Matter should not be left till the last stages.

According to newspaper reports you have said that it will be fit and proper that our original Constitution should be passed in Hindi. There can be little doubt that this would be a desirable thing to do. I feel however that this will be exceedingly difficult within the time alloted or indeed within any reasonable time. We have passed the Constitution clause by clause after much argument not only about general policies but also about words and phrases. Necessarily this had to be so because the Constitution has to be precise. If we try to pass a Hindi translation of this Constitution, we can hardly do so en block or as a whole. We shall have to go through the same process of clause-by-clause-consideration and I have little doubt that there would be a great deal of argument about innumerable words and phrases, both from the linguistic and other points of view. The matter will drag on for months and probably give rise to a great deal of excitement.

As a matter of fact the question of a Hindi translation itself has not been finally decided. Various translations were made, completely

Contd....

differing from each other. Then you appointed a Committee to co-ordinate them. That Committee, I understand, is proceeding with this task, but meanwhile one member of that Committee, in presenting a certain view point, has apparently resigned because he felt that the approach of this Committee was not in accordance with the directions that you gave. These directions were that the language should be precise and simple and, as far as possible, understood by most people. I believe that the Committee has accepted as a basis for discussion one of the Hindi translations which, according to some people, is very difficult to understand, lacking in precision and not even good Hindi. All these difficult questions have to be solved and I do not see how they can be solved in a way so as to produce a translation which can become the original of our Constitution in the course of the next two or three months.

As a matter of fact, the translation merely cannot be finalised till the English original has been finalised by the Constituent Assembly. That is to say, it is only after the Constitution has been passed in English that the Hindi translation can be finalised. Then will come the question of vetting this Constitution by the Constituent Assembly. That will take a lot of time.

It seems to me that the only feasible course is for the Constitution to be passed in English by the Constituent Assembly and to be adopted as such. Then the Hindi translation is proceeded with, first by an Expert Committee (non-members of the Constituent Assembly), secondly by a Committee of the Constituent Assembly, then [redacted]

6

New Delhi,
May 8th, 1949.

My dear President,

It appears to be taken for granted by some people that the Indian Republic will be proclaimed [illegible] Personally I rather doubt whether this is a wise thing to do. Apart from the unwisdom of choosing that date, I do not see how we can finish the consideration of the Constitution by that time. We may finally by some time in July. That is, we may finish the whole of it. We shall certainly contain some transitional clauses and we shall have to decide finally on the nature of these clauses. I think we should have a sufficient margin after that to allow us to fix things properly. Thus the date to be fixed should be some time about [illegible]

It is clear that the full implementation of the new constitution can only take place after the new elections there are over. These elections cannot take place, at the earliest, before the winter of 1950-51. We can hardly wait till then for the proclamation of the Indian Republic. Therefore some date will have to be fixed much earlier than that when the Indian Republic is proclaimed in accordance with certain transitional clauses passed by the Constituent. What exactly this date should be is a matter for us to consider and will depend on the nature of the steps to be taken by us as laid down in the transitional clauses.

From many points of view, a very suitable date would be January 26. The only thing that can be said against it is that it is too far off. Some other earlier date may be chosen but I rather doubt if it can be much earlier than January.

I have referred to the transitional clauses etc. Is it not desirable for thought to be given to these from now onwards ? The Drafting Committee may do it or some other Committee. There is no immediate hurry. The matter should not be left till the last stages.

According to newspaper reports you have said that it will be fit and proper that our original Constitution should be passed in Hindi. There can be little doubt that this would be a desirable thing to do. I feel [illegible] this will be successfully [illegible] while [illegible] indeed within any reasonable time. We have passed the Constitution clause by clause after much argument not only about general policies but also about words and phrases. Necessarily this had to be so because the Constitution has to be precise. If we try to pass a Hindi translation of this Constitution, we can hardly do so en block or as a whole. We shall have to go through the same process of clause-by-clause-consideration and I have little doubt that there would be a great deal of argument about innumerable words and phrases, both from the linguistic and other points of view. The matter will drag on for months and probably give rise to a great deal of amusement.

As a matter of fact the question of a Hindi translation itself has not been finally decided. Various translations were made, completely differing from each other. Then you appointed a Committee to coordinate them. That Committee, I understand, is proceeding with this task, but recently one member of that Committee, presenting a [illegible] view point, has apparently resigned because he felt that the approach of this Committee was not in accordance with the directions that you gave. These directions were that the

the language should be genuine and simple and, as far as possible, understood by most people. I believe that the Committee has accepted as a basis for discussion some of the Hindi translations which, according to some people, is very difficult to understand, lacking in precision and is not even good Hindi. All these difficult questions have to be solved and I do not see how they can be solved in a way as to produce a translation which can become the original of our Constitution in the course of the next two or three months.

As a matter of fact, the translation cannot be finalised till the English original has been finalised by the Constituent Assembly. That is to say, it is only after the Constitution has been passed in English that the Hindi translation can be finalised. Then will come the question of writing this Constitution by the Constituent Assembly. That will take a lot of time.

It seems to me that the only feasible course is for the Constitution to be passed in English by the Constituent Assembly and to be adopted as such. Then the Hindi translation is proceeded with, first by an Expert Committee(non-members of the Constituent Assembly), secondly by a Committee of the Constituent Assembly. They should take some time over it so that the work might be done well and not rushed through. The matter is too important to be dealt with casually. When the Hindi translation is finalised, this can also be adopted as an original text by the C.A.

I am putting forward these thoughts just for your consideration.

Yours sincerely,

Sd. Jawaharlal Nehru.

The Hon'ble Dr. Rajendra Prasad,
President,Constituent Assembly of India,
New Delhi.

New Delhi,
the [illegible] May 1948.

My dear Dr. Ambedkar,

I am enclosing copy of a letter which I have received from the Prime Minister. The Drafting Committee will be particularly interested in the first four paragraphs of it. I should like to have an opportunity of meeting the members of the Drafting Committee to discuss the points raised therein. The other paragraphs also deserve consideration and I would like to have a talk on that also.

Yours sincerely,

JL

The Hon'ble Dr. B.R. Ambedkar,
Chairman, Drafting Committee,
New Delhi.

[redacted]

I have said it in the House that I would like to have the Constitution in our own language. Since the draft has been prepared in English, the English version should be given the status of the authentic version of the Constitution. With regard to this Indian version we may agree to also authorize that it be this translation that is used in case of conflict that English version will be accepted as the authoritative version. For the first say 10 or 15 years, we might also make the Indian version liable to amendment by an ordinary process as in the case of laws. Gradually with the English language still persisting and after that the Indian version might be made the authoritative version or atleast of equal authority with the English version. I am suggesting this because within 10 or 15 years the Indian version may become established and the language also may become current in new political problems. Within this period I anticipate that language used in the centre will become more and more Hindi or Hindustani and people from the south will get an opportunity of studying Hindustani. Any method of amendment will enable the language of the Hindi version to be altered and improved which will probably be desired. In Ireland, I have noticed that they have had many amendments to the Irish version without changing substantially the provisions of the Constitution in English which is the authentic one. Also the question of language has presented difficult problems and the solution has been the same that I have suggested above. I propose to have a note prepared on these lines for the consideration of the Steering Committee when they next meet. In case you have any suggestion in this connection, I shall have that also incorporated in the note.

Yours sincerely,

The Hon'ble Pandit Jawaharlal Nehru,
Prime Minister, India.

DRAFT.

3.6.49.

My dear Prime Minister,

Please refer to your letter No. 537 dated the 24th May 1949. Although the Constituent Assembly is making fairly rapid progress with the articles of the draft Constitution it is difficult to forecast when we will be able to complete consideration of the whole draft. But if things go on as they are doing at present we may hope to be able to complete the 2nd reading which we are going through at present by the end of July at the latest if not earlier. We shall then require some time for putting the draft in form for final consideration at the third reading. Thereafter there will have to be an adjournment for atleast a fortnight or three weeks if not more before the third reading commences. That might take a week or ten days. It therefore does not look possible that we would finalise the constitution before the 15th August. There will have to be certain steps to be taken before the Constitution actually comes into force. I have placed your letter before the Drafting Committee and the matter is under investigation. I would write to you again about the steps which will be considered necessary after the matter has been considered by the Drafting Committee. It has been suggested in some quarters however that we should be able to get through the preliminaries by about the end of September and the 2nd of October will be suggested as a suitable date for bringing the Constitution into force but this of course is only a suggestion and its feasibility can be decided only after the investigation which is being made is completed.

As regards the Hindi version of the Constitution

Constitution, I realise the difficulties which you have mentioned. There is also the time factor which cannot be ignored. I am thinking of following something like the procedure indicated below in this connection. The Expert Committee is revising the translation and I propose to ask the House to appoint a Committee of its own to consider the translation prepared by the Expert Committee. When some progress has been made we might ask the House to set apart say one day ~~fmx~~ in the week ~~tmx mmrk~~ to consider the Hindi version as revised by the Committee of the House and pass the translation article by article. As there will not be many amendments on the substance of the article and the discussion will be confined only to the language which will have been vetted by the Committee of the Hou-se, it may be hoped that the House would go fairly quickly over the translated version. The idea is therefore as far as possible to pass the English draft as also the Indian version of it more or less simultaneously, if possible. But as I have said the time factor will be very important in following this course, and if it is found as a matter of expediency that the Indian version takes more time than I have anticipated, then it may have to be held over for consideration by the Assembly after the English draft has been finalised. ~~Rmkxmmm~~ I have said it in the House that I would like to have our Constitution in our own language. Since the draft has been prepared in English, the English version will have of course to be given the status of the authoritative version of the Constitution. With regard to the Indian version we may give it also authority but subject to this limitation that ~~tmx~~ in case of conflict the English version will be treated as the authoritative version for the first say 10 or 15 years. We might also make the Indian version liable to amendment by an easier

easier process so as to bring it into conformity with the English version within this period and after that the Indian version might be made the authoritative version or atleast of equal authority with the English version. I am suggesting this course because within the 10 or 15 years the Indian version may become crystallised and the language also may become current in our political parlance. Within this period I anticipate the language used in the centre will become more and more Hindi or Hindustani and people from the south will get an opportunity of adjusting themselves. Easy method of amendment will enable the language of the Hindi version to be altered and improved within this period. In Ireland I have noticed that they have had many amendments to the Irish version without corresponding amendments of the constitution in English which indicates that there also the question of language has presented similar problems and the solution has been the same that I have suggested above. I propose to have a note prepared on these lines for the consideration of the Steering Committee some-time next week. In case you have any suggestion in this connection I shall have that also incorporated in the note.

Yours sincerely,

The Hon'ble Pandit Jawaharlal Nehru,
Prime Minister of India,
New Delhi.

The Irish Constitution is framed in two languages namely Irish and English. This can well serve as a model for having our Constitution in Hindi and English. In case of conflict between the Irish and English texts of the Constitution, the text in the Irish language, which is the national language, prevails. This is contained in article 25, section 4 sub-section 4 of the Irish Constitution. We may, however, have to modify this in our case so that in case of conflict between the Hindi and the English texts the English text shall prevail for a period of say 10 years. We should also have a provision enabling the Parliament to amend the Hindi text from time to time in order to rectify any defects discovered hereafter in the translation. In a period of ten years the language of the Hindi text will be stabilised and it should be possible to have the Hindi text close as our Constitution.

As to the next question what procedure should be followed to get ready the Hindi version of the draft Constitution. Pandit Jawahar Lal Ji suggests that the Hindi draft prepared by the Experts Committee be gone through by a Committee of the House and then be presented to the Constituent Assembly. The best way to achieve this would be:

(i) A Committee of the House be appointed as soon as possible, consisting of about 15 members.

a) The Experts Committee should immediately send its translation of the articles so far done by them and should go on sending every week the articles translated by them.

ii) The Experts Committee should immediately send its translation of the articles so far done by them and should go on sending every week the articles translated by them.

iii) The Committee of the House should scrutinise the translation and present it to the Constituent Assembly, say every Monday which may be reserved for consideration of the Hindi drafts.

iv) The discussion in the House should be confined only to the accuracy of the translation.

This method will effect economy both in time and money. If the House should wait for the Hindi version till the entire English draft has been passed, it would mean an additional full Session which would be very

worthy. Besides, the members would have become few
there by their prolonged labour with th English draft
and naturally them might devote themselves here may even
think that the Hindi draft would be unnecessary and
a mere official translation might do. The passage of
Hindi draft may thus be jeopardised. It would be ap-
pealing to our national self-respect that we have our
Constitution in a foreign language only and without
one in our own language.

PRIME MINISTER
INDIA

No.664-PM.

New Delhi,
June 5, 1949.

My dear President,

[illegible] your letter of June 4th. As regards the procedure you suggest, I feel that we [illegible] to-day till we complete the pre-[illegible] of the Draft Constitution, probably [illegible] of July. I do hope that there is going to [illegible] and recess before that. The effect [illegible] will be most objec[illegible] of mind, apart from [illegible]. I [illegible] that we [illegible]. It may take at least six [illegible] after the final reading of [illegible] to print, [illegible] earlier [illegible] to print. I do not myself [illegible] can be got earlier than [illegible]. I take [illegible] that we may [illegible] for the [illegible] of [illegible] we also go ahead to allow for various [illegible] the 26th January, which is from every point of view [illegible] the 26th January, which is from every point of view [illegible] exactly [illegible].

[illegible] adoption of the Hindi version of [illegible] the text, I [illegible] the possibility [illegible] that is the week [illegible] for this in the Hindi version. [illegible] the correctness of the English [illegible], I am sure this consideration of the Hindi translation will be a simple matter and will give rise to three arguments [illegible] every step and on almost every word. It will thus [illegible] to raise passions which will be reflected in the consideration of the English version and delay matters there. Looking at the Hindi version as originally prepared, [illegible] because I do not understand [illegible] at all.

[illegible] is inevitable that the English Constitution will be considered the authoritative one. Many [illegible], the Hindi version may have equal or greater authority. Take for instance the case of Ireland. I might inform you that I had a talk about this with the Prime Minister of Ireland and he told me that they found it very difficult to carry on with Gaelic and were reverting more and more to English. In fact they had always used far more English than Gaelic. During my stay in Dublin, I visited the Jail. Every speech and question was in English, as well as the answer. Formally by law they have named their country only Ireland and not Eire.

Yours sincerely,
Jawaharlal Nehru

The Hon'ble Dr Rajendra Prasad,
President, Constituent Assembly
of India,
[illegible], Queen Victoria Road,
New Delhi.

Copy to office Drafting Committee & H.P. Committee.

N/5/0

Ans

[illegible]
[illegible]
[illegible]
June 17, 1946.

My dear President,

Thank you for your letter of June 15th. As regards the procedure, I agree with you that we can adopt the procedure by which we establish the proposed relationship of the Dominion of India, probably by the end of July. I do not think there is any need to do it in the Constituent Assembly itself. In fact I think it would be better if the Constituent Assembly is merely subject to formal changes and then dissolves itself. I imagine that all business of common interest will be over by the end of June, but perhaps August will be the first meeting of it at which it could be dissolved. We have to consider the date for the Muslim League Pakistan Constituent Assembly also. I do not myself see how this can be much earlier than September. I take it that if the Assembly meets for the first time for the third reading, it will take a few days and that date we fix must be some days ahead so that we allow for various preparations to be made. If the date fixed happens to be anywhere in September, then probably it will be suitable to fix the 15th August, which is from every point of view an auspicious day. However, this can only be considered after we have finished the second reading and know exactly where we are.

As regards the adoption of a Hindi version of the Constitution, I confess I rather doubt the feasibility of the proposal you make, that is that a day in the week should be set aside for considering the Hindi version. Apart from this delaying the consideration of the English draft, I am afraid this consideration of the Hindi translation will be no simple matter and will give rise to grave argument at every step and on almost every word. It will then lead to rather peculiar which will be reflected in the consideration of the English version and delay matters there. Looking at the Hindi version of originally proposed, I am completely at sea because I do not understand it at all.

I think it is inevitable that the English draft should be considered the authentic one. Any Hindi version after the Hindi version may have equal or greater authority for purposes the courts of Ireland. I might inform you that I had a talk about this with the Prime Minister of Ireland and he told me that they found it very difficult to carry on with Gaelic and were reverting more and more to English. In fact they had always used for ever English on that Gaelic. During my stay in Dublin, I visited the Dail. Every speech and question was in English, as will all the Every formally by law they have made their ordinary Ireland will not have.

Yours sincerely,

Sd. Jawaharlal Nehru.

The Hon'ble Dr. Rajendra Prasad,
President, Constituent Assembly of India,
2, Queen Victoria Road,
New Delhi.

My dear Prime Minister,

I am enclosing herewith copy of a letter and a note which I have received from Chief Justice H. Kania of the Supreme Court. The question of salaries of Judges has not yet been dealt with by the Constituent Assembly and the articles relating thereto will have to be considered during the next session. I hope, the Government will have taken their decision in the matter before then. Chief Justice Kania's note has to be considered by the Government rather than by the Constituent Assembly and I have therefore thought it necessary after consulting Sardar Patel to pass it on to you.

Yours sincerely,

(Rajendra Prasad)

The Hon'ble Pandit Jawaharlal Nehru,
Prime Minister of India,
New Delhi.

[redacted]

[redacted]

My dear Chief Justice Malik,

I have received your letter dated the 30th June 1950, together with its enclosure. As the question of relation of Judges posts with the Government who will have to take the decision on the matter I am forwarding your note to the Hon'ble Prime Minister. You may have noted that the two articles dealing with selection and [illegible] of Judges of Supreme Court and High Courts have not yet been considered by the Constituent Assembly. They will be taken up when the Assembly meets again from the 30th July onwards. I am sure, the Government will be in a position to put forward their proposals after considering your points of view.

Yours sincerely,

JL

(Jawaharlal Nehru)

The Hon'ble Sri S. Malik,
Chief Justice, Allahabad High Court,
Allahabad.

HIGH COURT,
ALLAHABAD.

June 25, 1949.

My dear Rajendra Babu,

I have been following the proceedings of the Constituent Assembly relating to High Courts as published in the press. I have ~~also~~ heard that there are certain proposals for reduction of salaries of Judges and also of the present incumbents. I am enclosing a note on certain points. I hope you will kindly consider them and give us your valuable support. My anxiety is that the judiciary may be able to maintain ~~the~~ its position and prestige and discharge its duties efficiently and with independence.

With respects,

Yours sincerely,

B. Malik

Encl: A copy of note.

The Hon'ble,
Dr.Rajendra Prasad,
President, Constituent Assembly,
NEW DELHI.

1. If Judges recruited from the Bar are made to retire at 60 they are not likely to earn a substantial pension. The Judges recruited from the Provincial Judicial Service earn a pension of only Rs.700/- in the United Provinces whatever may be the length of service. With the present high prices retired Judges would find it very difficult to live on their pension. A substantial increase in the rate of pension is, therefore, necessary. The pension should be made income-tax free.

If the Judges after retirement are not allowed to practise before any court or authority in the interest of the dignity of the office it is necessary that they should be paid a pension which will enable them to live in moderate comfort and maintain the dignity and the position of the office which they had held.

It may be pointed out in this connection that in the United States pension is equal to the salary and a Judge retires when he is unfit for work. In England it is two-thirds of the salary.

2. Retired Judges used to be appointed in the High Courts of Indian States. There would probably be the same age restriction for the State High Courts and if the Judges are not allowed to practise anywhere or appear before any authority they will have to sit at home and live on their pension. Unless substantial increase is made in the pension that is paid to the Judges the restriction against practise should be confined only to the Province where a Judge had held office.

3. There was no statutory age limit upto 1935. It was for the first time introduced in the Government of India Act of 1935 and 60 was fixed as the age of retirement for High Court Judges and 65 for Federal Court Judges. Before 1935 the Judges at the time of appointment were required to give an undertaking that they would

retire at the ages mentioned above. This system had worked satisfactorily from 1925 to 1955. It had one advantage, and that of flexibility. If a short extension made a substantial difference in the pension or without a few months' extension the minimum pension would not be earned such extensions were granted on the recommendation of the Chief Justice. I do not remember of any case where any extension beyond two years was ever given.

I do not know why itx is necessary to fix an age limit in the constitution. If, however, it is considered necessary that there should be an age limit prescribed for retirement, I would suggest that a negative provision be made so that the age of retirement for High Court Judges and Supreme Court Judges may not be fixed below 60 and 65 respectively. The undertakings will have to be given to the President at the time of the appointment. This would have the advantage of introducing a certain amount of flexibility and, apart from the cases in which extensions are granted to earn a Judge a pension, it would enable the age limit to be raised without much difficulty if from experience it appeared that younger men of suitable calibre were not available and the Judges holding office could work efficiently up to the age of 62 or 65.

4. If the age of retirement is left at 60, as at present suggested, it would cause great hardship if lawyer Judges are not allowed to practise anywhere or appear before any authority. This provision appears to be too drastic and, if this is accepted, compensation by way of increased pension is absolutely ~~xxxxx~~ essential. At 60 the majority of them are fit for work and if this drastic provision is introduced in the constitution the compensating factors of a better pension and increased age of retirement should be introduced.

5. With the increased income-tax and high prices

a Judge's salary to-day does not amount to much. In England the Socialist Government are thinking of increasing the salary of Judges. There is no case for a reduction in India. It is essential that High Courts should be able to maintain their old standards and should have the best men. The Judges have to maintain a certain standard of living in the interest of the administration of justice itself. This can only be possible if salaries paid are such that the Judges are able to maintain the standard of living expected of them. If anything, the salary which was fixed three-quarters of a century ago and was then free of income-tax should be increased rather than decreased. In any case there is no reason for reduction of salary of Judges of the High Court below Rs.4,000/-.

If the salary is reduced to Rs.3,500/- then the Judges should be compensated by being given other amenities such as free and furnished houses etc.

The reduction in the salary would not mean a saving of more than Rs.75,000/- or a lakh in the year for the whole of India.

6. The position of a Chief Justice of a Province is very important. He must command respect of the Bench and the Bar. He has to do a lot of administrative work. The difference of Rs.1,000/- between a Chief Justice's salary and a Judge's salary is proper. To give a the Chief Justice merely an allowance of Rs.250/- is absurd.

There should be no reduction in the salary of the Chief Justices. If the salaries are reduced there should be a substantial difference between the salary of the Chief Justice and the Judges and the Chief Justices should also be compensated by being given

other amenities such as free and furnished houses.

The Chief Justices of at least the important High Courts such as Calcutta, Bombay, Madras, Allahabad, Patna and East Punjab should get the same salary as the Judges of the Supreme Court.

9. The salary fixed for the Judges of the Supreme Court must be such as to attract the best talent in India and to make drastic reduction in the salary of the Judges of the Supreme Court in these days of high prices and high income-tax is most improper. If the salary must be reduced from Rs.5,000 to Rs.4,000, they should by way of compensation get additional allowances for house rent etc. to make up for the reduction.

The same remarks would apply to the salary of the Chief Justice of India.

8. Chief Justices of the important High Courts should be ex-officio Judges of the Supreme Court. This would improve the tone of the High Courts as the Chief Justices would come in touch with each other and with the Judges of the Supreme Court. This would have the additional advantage that the status and position of the High Courts would not be lowered by reason of there being a higher court in the land and the High Courts would be more intimately in touch with the Supreme Court. It would be a calamity if the position and prestige of the Provincial High Courts is lowered. The raising of the position of the Provincial High Courts would not in any way interfere with the position and prestige of the Supreme Court.

9. There is no valid reason for making a distinction in the age of retirement fixed for the Judges of the High Court and the Judges of the Supreme Court.

10. The subordinate judiciary - both civil and criminal - should be placed under the control of the High Court and the High Court should have the power of

their transfer etc. This has been suggested in Chapter VIII by the Drafting Committee in Articles 309 (A),(B) and (C).

11. The amended Article providing for the officers and the servants being appointed by the Chief Justice in consultation with the Public Service Commission of the State will not work satisfactorily. As two words "officers"and"servants"have been used, the word "servants" would also include the menial staff and all appointments, clerical and otherwise, will have to be done in consultation with the Public Service Commission which ~~xxxx~~ will not only be impracticable but will entail curtail a considerable increase in the work of the Public Service Commission. In this connection it may be pointed out that the District Magistrates and the District Judges and other Heads of Departments are authorised to make all ministerial and menial appointments and can take disciplinary action with ut the approval of the Government and it is only in the appellate stage that the Government comes in. If a provision in the constitution is considered to be necessary it should be to this effect that the appointments shall be made according to the rules framed by the High Courts with the approval of the Governor so that at the time of making of the rules the Provincial Governments may make suitable provision for control. Such a provision, however, appears to be wholly unnecessary and High Courts are not expected to command less confidence than Public Service Commissions.

12. The proposal giving power to recall Judges provides that the Judges can be recalled for a case or a group of cases. The services of Judges are frequently required to work on various tribunals. This demand is bound to grow in future. As under the constitution it will not be possible to appoint temporary or Additional Judges for limited periods it may be worthwhile to provide that the retired Judges can be recalled for limited periods with the approval of the President. It would be wasteful to increase the number to provide for such contingencies. Moreover almost every High Court is undermanned.

13. It is not clear whether the provision about recalling of Judges applies only to Puisne Judges or also to retired Chief Justices.

14. The reduction of salary of Judges and Chief Justices should not in any way be given retrospective effect and should not apply to existing Judges. Solemn undertakings have been given and there should be no breach of those undertakings. The matter has been fully dealt with in the note of the proceedings of the Chief Justices' Conference. It is not necessary to add extra reasons. If the salary of existing Judges are reduced they would be entitled to resign and go back to the Bar as they would no longer be bound by their undertakings. This would not be at all desirable nor would it be proper that this situation should arise by reason of the Government committing breaches of its solemn pledges.

15. The salaries of the Secretaries of the Central Government specially of the members of the Indian Civil Service are not being reduced. The Judges salary should not be reduced below the salary of the Secretaries of the Govt. of India. The new Order of Precedence is also not satisfactory. Care should be taken to see that the position and prestige of the Judges are not lowered and they are not given the rank and the position of Secretaries of the Departments.

PRIME MINISTER
INDIA.

No. 926/PM
New Delhi,
July 1, 1949.

My dear Rajendra Babu,

Thank you for your letter of June 30th, enclosing a letter from Chief Justice Malik of the Allahabad High Court. I am generally in agreement with the argument, though I do not agree with everything that he says. I am afraid, however, that most of the members of the Constituent Assembly are bent on reducing these salaries. I think that will be unfortunate.

Yours sincerely,

Jawaharlal Nehru

The Hon'ble
Dr. Rajendra Prasad,
1 Queen Victoria Road,
New Delhi.

CONSTITUENT ASSEMBLY OF INDIA

Council House,
29th August, 1949.

New Delhi, the.....

My dear Jawaharlalji,

I understand from Sri B.N.Rau and also from what I remember you mentioned to us that there is a proposal to dissolve the present Constituent Assembly after the Constitution is passed and have a general election on the basis of the same electorate, viz., the existing Legislative Assemblies in Provinces. I think I should let you know my reactions to this proposal.

I think the first step in this direction will be an amendment of the Indian Independence Act which has made the Constituent Assembly a statutory body or to have some provision in the Constitution itself in the part dealing with Transitory Provisions. In either case the provisions will have to be somewhat detailed and to cover the following points:-

(a) Power to dissolve the existing Assembly and to hold a general election.

(b) So far as the existing Provinces are concerned, there will be no difficulty. But we do not have Legislatures in all the States or Unions of States. The States' representatives in the present Assembly have been elected or nominated under various ad hoc arrangements. Some are elected by Legislatures, some nominated by the Rulers, some elected by ad hoc electoral colleges. There is a proposal pending before me to authorise the Chief Commissioner of Bhopal to nominate a member from there. There is no representative yet from the Vindhya Pradesh Union as there is no Legislature and there is not yet any ad hoc electoral college. Provision will have to be made to cover all these and other cases which I may have missed. Nomination of representatives to the Assembly is not desirable and while the nominations already made may be tolerated on account of the peculiar and complicated circumstances in which it will be difficult to justify them in a new law which we may make.

(c) Difficulty will arise regarding representation of Muslims, Christians and Sikhs. We have decided to do away with reservation in the new Constitution but will have to provide for them in the new law. Otherwise these communities will have a just grievance that this general election is being resorted to in order to get rid of their representatives who are mostly independent members as distinguished from Congress party members.

There are certain other considerations of policy which may not be ignored. The Constituent Assembly was elected for the particular purpose of preparing the Constitution and care was taken by the Congress party which had overwhelming majorities in most of the Provinces to see that prominent non-party men whose presence was expected to be helpful to the purpose in view were elected. The new Assembly will pre-eminently be the Central Legislature. In this election the same consideration will not be given to non-party men. The result may be that the few non-party men will be eliminated and on the whole we shall have a House which will be an even more one-party House than the present one. The non-party men will have good reason to complain that the general election will result in,

CONSTITUENT ASSEMBLY OF INDIA

Council House,

New Delhi, the.....

even if not so intended, returning one party.

If the object is to bring some fresh blood, it can be served by asking those members who are also members of the Provincial Legislatures to resign and have the vacancies filled up by election. This will bring in a pretty large new element and will not be open to criticism either on the part of people who have come through separate electorates or of independents. It will also obviate the difficulties connected with the representation of the States.

The Hon'ble Shri Jawaharlal Nehru,
Prime Minister,
New Delhi.

Copy to Sardar Vallabhbhai Patel
Birla House
Bombay

PRIME MINISTER.
INDIA.

No.1242-P.M.
New Delhi.
August 31,1949.

My dear President,

I refer to your letter dated the 29th August regarding the proposal to dissolve the pr present Constituent Assembly after the Constitution is passed.

We shall of course give every consideration to the points you have mentioned.

I might mention that there appears to be no danger of prominent non-party men not finding a place in any new Assembly that might be elected. But the fact has to be remembered.

The main reason for suggesting a new new election on the old basis was a psychologica one. he Present Assembly has grown rather stale in the eyes of the public and any change, even a partial one, would bring an element of freshness. But the difficulties you have pointed are obvious and deserve every consideration.

Yours sincerely

Sd/ Jawaharlal Nehru.

The Hon'ble Dr. Rajendra Prasad,
President, Constituent Assembly of India,
Council House,
New Delhi.